

1 Phyllis Kupferstein, Esq. [SBN 108595]  
2 pk@kupfersteinmanuel.com  
3 Cynthia L. Zedalis, Esq. [SBN 118447]  
4 cz@kupfersteinmanuel.com  
5 Kupferstein Manuel LLP  
6 865 South Figueroa Street  
7 Suite 3338  
8 Los Angeles, California 90017  
9 Telephone: (213) 988-7531  
10 Facsimile: (213) 988-7532

11 Attorneys for Defendant Harvey Weinstein

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 DOMINIQUE HUETT, an individual,  
15 Plaintiff,

16 v.

17 THE WEINSTEIN COMPANY LLC,  
18 BOB WEINSTEIN and HARVEY  
19 WEINSTEIN,

20 Defendants.

CASE NO.: 2:18-cv-6012 SVW (MRW)  
Honorable Stephen V. Wilson

**DECLARATION OF BENJAMIN  
BRAFMAN IN SUPPORT OF  
DEFENDANT HARVEY  
WEINSTEIN'S MOTION TO STAY**

Hearing Date: January 28, 2019  
Time: 1:30 p.m.  
Courtroom: 10A

21 I, BENJAMIN BRAFMAN, ESQ., declares as follows:

22 1. I am an attorney-at-law licensed to practice in the State of New York  
23 and am a principal of Brafman & Associates, P.C. and criminal counsel for  
24 Defendant Harvey Weinstein ("Defendant") in connection with the pending  
25 criminal action *The People of the State of New York v. Harvey Weinstein*, Supreme  
26 Court of the State of New York, New York County, Docket No. 2018NY023971,  
27 and an investigation by the United States Attorneys' Office for the Southern  
28 District of New York ("SDNY") (the "Criminal Actions"). I make this declaration  
in support of Defendant Harvey Weinstein's Motion to Stay in the above-captioned  
civil action.

1           2.     I have personal and first-hand knowledge of the facts set forth below,  
2 and if called and sworn as a witness, I could and would competently testify as to  
3 each of them.

4           3.     Since 1980, I have been the principal of a boutique law firm engaged  
5 in the practice of criminal defense. I submit this Declaration based on my personal  
6 knowledge of the Criminal Actions, my review of the Memorandum of Law in  
7 support of Defendant's motion seeking an Order staying the action initiated by  
8 Plaintiff Dominique Huett ("Plaintiff"), currently pending before this Court, and a  
9 review of Plaintiff's First Amended Complaint ("FAC"). A stay of discovery is  
10 necessary to safeguard Defendant's liberty interests and constitutional right against  
11 self-incrimination.

12           4.     Defendant was arrested on May 25, 2018, and charged with the crimes  
13 of criminal sexual act in the first degree in violation of New York Penal Law §  
14 130.50(1), rape in the first degree in violation of New York Penal Law §  
15 130.35(1), and rape in the third degree in violation of New York Penal Law §  
16 130.25(1). A grand jury formally indicted Defendant on those charges on May 30,  
17 2018. Four weeks later, on July 2, 2018, the New York District Attorney  
18 ("NYDA") filed a superseding indictment charged Defendant with the crimes of  
19 predatory sexual assault (New York Penal Law § 130.15(2) (Counts One and  
20 Three), criminal sexual act in the first degree (New York Penal Law § 130.50(1)  
21 (Counts Two and Six), rape in the first degree (New York Penal Law § 130.35(1))  
22 (Count Four), and rape in the third degree (New York Penal Law § 130.25(1))  
23 (Count Five).

24           5.     Defendant is also presently the target of a federal criminal  
25 investigation out of the Southern District of New York, as well as the target of  
26 active criminal investigations of felony sexual assault allegations in both Los  
27 Angeles, California, and in London, England.

28

1           6. Defendant's arrest and arraignment and formal charges of sexual  
2 assault, as well as the other pending investigations, have placed Defendant in the  
3 perilous position of having to respond to pleadings and discovery in the instant  
4 civil litigation that arises from the same or similar conduct for which he is now  
5 under criminal prosecution.

6           7. It is my understanding from the review of Plaintiff's FAC that she is  
7 seeking monetary damages against Defendant for unlawful sex trafficking in  
8 violation of 18 U.S.C. § 1591. Plaintiff's allegations arise from allegations of  
9 sexual assault and rape.

10          8. The FAC alleges, *inter alia*, that Plaintiff was sexually assaulted and  
11 raped as a result of Defendant's alleged pattern and practice of using his position at  
12 The Weinstein Company to facilitate sexual misconduct. Dkt. 1-5, ¶¶ 18-21.  
13 Defendant has and continues to vehemently deny that he engaged in any non-  
14 consensual sexual encounters.

15          9. The alleged conduct set forth in the FAC is the same conduct that is at  
16 issue in the Criminal Actions; *i.e.*, sexual assault and rape.

17          10. Defendant cannot respond to Plaintiff's allegations or give testimony  
18 concerning the allegations without also providing testimony that would impact the  
19 Criminal Actions. A stay in this action is necessary to safeguard my client's  
20 constitutional rights.

21          11. If this action is not stayed, Defendant will be compelled to assert his  
22 Fifth Amendment privilege and be unable to give any testimony on his behalf, or  
23 risk incriminating himself. As a result, Defendant will be left to assert the Fifth  
24 Amendment in response to all allegations in the FAC. Further, Defendant cannot  
25 be deposed in this proceeding or respond to written interrogatories without the risk  
26 of self-incrimination.

1           12. The need for a stay here is especially important given the nature of the  
2 allegations underlying both this action and the Criminal Actions. In sex crime  
3 cases, such as the Criminal Actions, the prosecution often seeks to admit  
4 propensity or prior bad act evidence, which is often barred in other types of  
5 prosecutions. The NYDA has already provided formal notice that it will be  
6 seeking to admit claimed evidence of reported uncharged similar acts of sexual  
7 conduct at trial of the pending superseding indictment. As such, Defendant cannot  
8 give testimony and evidence concerning these allegations regardless of whether  
9 Plaintiff is involved in the Criminal Actions or investigations.

10           13. Being forced to litigate this case and participate in discovery would  
11 great prejudice Defendant by forcing him to either take the Fifth Amendment and  
12 receive an adverse inference, or create potentially incriminating evidence for the  
13 prosecution of the Criminal Actions. Absent a stay of this proceeding, my client's  
14 ability to defend himself in the Criminal Actions will be severely prejudiced.

15           14. Defendant is facing charges that carry a maximum prison sentence of  
16 up to 25 years to life, and the prospect that additional charges will be filed in the  
17 near future. The grave risk to my client's liberty interests and constitutional right  
18 to defend himself without forced incrimination outweigh any prejudice to Plaintiff  
19 that could result from a stay. Moreover, it is my understanding that Plaintiff's  
20 claims arise out of an alleged incident that occurred in 2010, which refutes any  
21 argument Plaintiff could make that she desires to litigate her sex trafficking claim  
22 expeditiously.

23           15. I am not seeking this Court's sympathy as Defendant will defend  
24 himself at the appropriate time. Rather, I seek only fairness and a just decision  
25 staying these proceedings to safeguard Defendant's constitutional right against  
26 self-incrimination.

1           16. Defendant denies the charges levied against him and is entitled to a  
2 full and meritorious defense unencumbered by the weight of civil proceedings  
3 which may result in self-incriminating testimony.

4           I declare under penalty of perjury under the laws of the United States of  
5 America that the foregoing is true and correct.

6           Executed on this 28<sup>th</sup> day of November, 2018, at New York, New York.

7  
8             
9           BENJAMIN BRAFFMAN, ESQ.